

REMARKS

Claims 1-25, as amended, are pending for the Examiner's review and consideration. Claims 2, 5, 7, 12, 14, and 25 were amended to correct minor typographical errors. Claims 1, 7, and 10 were amended to clarify that the bar is placed directly into a baking pan without further dough manipulation, *i.e.*, without need to measure, form or further shape the dough. Support for this amendment is found, for example, in the Specification at page 5, lines 12-13. Claims 1 and 10 were amended to recite dough products instead of brownies. No new matter has been introduced by any of the amendments herein, such that entry of the claims is warranted at this time.

Claims 1 and 10 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Office Action states on page 2 that it is unclear if the claim is claiming a method for making any baked product or a brownie product. Both claims have been amended to clarify that the claims are directed to baked dough products, and not just a preferred embodiment of brownie products. In view of this, Applicants respectfully request that this rejection under 35 U.S.C. § 112, second paragraph, be reconsidered and withdrawn.

In support of the patentability of the present claims, Applicants attach hereto the Declaration of Merrie Martin Under 37 C.F.R. § 1.132 ("the Martin Declaration").

Claims 1-3 were rejected under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 6,551,640 to Drantch et al. ("Drantch") for the reasons set forth on pages 2-3 of the Office Action. Drantch is stated to disclose a dough and a method of making fresh baked products from the dough. The dough is purportedly prepared into finished baked goods by simple addition to a suitable baking container or pan and baking to form a finished baked good. The Office Action concedes, however, that Drantch does not disclose providing the dough in the form of a bar, as recited in claim 1. Drantch also does not disclose the shape and sizes recited in claims 2-3.

Drantch is directed to shelf-stable dough for baked goods wherein fat-bearing pieces that are dispersible within the dough, such as chocolate chips, resist softening by depression of melting point within the dough (Col. 1, lines 6-9). Drantch is primarily concerned with the interaction between chocolate chips in a cookie dough or other type of dough, and the various fats in the dough (Col. 2, lines 40-43). Drantch does generally disclose that the "doughs are conveniently prepared into finished baked goods by simple addition to a suitable baking container or pan and baking to form a finished baked good" (Col. 11, lines 21-25). At best, this could refer to doughs that flow to take on the shape of the baking container or pan into which they are placed. On the contrary, the claimed invention

recites that the bar has sufficient firmness to be handled without breaking. Moreover, one of ordinary skill in the art would have readily understood that, if the dough of Drantch was not flowable, additional manipulation, such as spooning, shaping, dropping, and spacing the dough onto to the baking pan is required to achieve a dough product that is ready to be baked (Martin Declaration, ¶¶ 6-7). This is particularly clear when reviewing Drantch as a whole, because Drantch clearly discloses that its "edible doughs can be held and shaped by hand" (Col. 6, lines 60-61) and it clearly discloses that the dough must be *performed in a baking tray specific to the desired type of final baked product* (Col. 12, lines 5-7). Thus, Drantch clearly teaches that efforts are required to shape its dough into desired shapes, using desired amounts, and then placed into a desired position on the baking tray being used for the desired type of baked product (Martin Declaration, ¶ 6).

In contrast to Drantch, claim 1 recites that the dough bar is placed directly in a baking pan without further dough manipulation. The claimed invention elegantly avoids various problems of Drantch and other prior art--there is no need to measure out suitable amounts of dough to form a cookie or other dough product; no need to shape the dough in the desired form; and no need to arrange dough pieces in the pan or spread the dough in the pan, as taught by Drantch. The claimed method, on the contrary, provides a bakery dough product with minimal effort, in rapid fashion, and with no wasted dough material by the consumer, that guarantees a consistent quality of the final baked product. The only "manipulation" needed by the consumer, as recited in claim 1, is placement of the dough bar into a pan before baking, which avoids wasted time and material due to forming and shaping of the dough (Martin Declaration, ¶ 5).

The Office Action maintains on page 3 that it would have been obvious to one skilled in the art to form the dough into any shape, such as a bar, depending on the type of product intended to be made from the dough. Applicants respectfully disagree. Furthermore, Drantch relates mainly to the preparation and baking of cookies. Cookies are generally prepared by spooning and dropping small portions of cookie dough onto a baking sheet, at suitable distance from one another, and then baking to form individual-sized, distinct cookies (Martin Declaration, ¶ 7). One of ordinary skill in the art would therefore have had no motivation to form the cookie dough of Drantch into a solid, monolithic bar (*Id.*). Moreover, it is well known that baking a large block of cookie dough would not have provided the desired dual texture of crispness on the outer edges and chewiness in the center that is typically desired for cookies, such as taught by Drantch (*Id.*). Drantch therefore did not

provide one of ordinary skill in the art with a reasonable expectation of success in using its dough in the form of a bar (*Id.*).

In addition, Drantch does not disclose or suggest a method for preparing a dough bar that is baked to produce a final fresh dough product that is not collapsed in the center of the pan after baking, as recited in claim 1 (Martin Declaration, ¶ 7). The methods of the present invention, however, provide a product while avoiding such a collapsed center (*Id.* at ¶ 5).

As can be readily seen, Drantch does not disclose or suggest a method of making a fresh baked product where the consumer simply and elegantly removes the dough bar, *i.e.*, dough portion that is already pre-measured and pre-shaped, from a package and places the bar directly in a baking pan without further dough manipulation to produce a baked product that is not collapsed in the center of the pan after baking. Rather, Drantch teaches away from the claimed invention by requiring that the doughs be formed according to the specific type of final dough product desired. Accordingly, Applicants respectfully request that the rejection of claims 1-3 under 35 U.S.C. § 103(a) be reconsidered and withdrawn, as no *prima facie* case of obviousness has been shown on the record--particularly in view of the Martin Declaration.

Claims 1-25 were rejected under 35 U.S.C. § 103(a) as obvious over International Publication No. WO 01/06858 to Blaschke et al. ("Blaschke") for the reasons set forth on pages 3-5 of the Office Action. The Office Action states that Blaschke discloses a ready-to-use bakery dough product that is formed in the shape of a block, and that the block is broken into pieces.

Blaschke discloses a dough, particularly for brownie preparation, that is provided as a sheet with score lines defining pieces of dough that are broken off to form individual brownies or other dough products, placed in a baking pan in spaced relation and then baked into separate brownies or other dough products (Page 1, lines 28-36 to Page 2, line 16). Although not as complicated as measuring and shaping the dough portions of Drantch from a reservoir of dough, the breaking and spaced placement of Blaschke's dough pieces takes some time and care by the consumer in order to obtain a suitable final dough product.

In contrast, the claimed methods do not require the bar to be broken off into smaller pieces prior to baking. In fact, Blaschke *teaches away* from the claimed invention by disclosing that its brownies or doughs are separated along grooves or score lines and then placed for cooking. On the contrary, the presently recited dough bar is not broken into

separate pieces before baking. Rather, the dough bar is placed directly into the baking pan without further dough manipulation once it is taken from its package.

The Office Action alleges on page 4 that it would have been obvious to one skilled in the art to bake the whole block of dough in the Blaschke process instead of first breaking the block into pieces. The Office Action maintains that the baking of the entire block saves time on breaking the block into pieces and separating the pieces is easier after the dough is baked than before it is baked. Applicants respectfully disagree in large part with this assumption, and respectfully submit that it is based on improper hindsight reconstruction.

While baking an entire block indeed saves time, as discussed herein in accordance with the present application, Blaschke failed to appreciate this simple and elegant advance as presently recited. Blaschke fails to disclose providing fresh baked dough products in the form of a bar, as well as failing to teach methods of using such a dough bar to prepare the fresh baked dough products (Martin Declaration, ¶ 8). On the contrary, Blaschke teaches that the dough is grooved or scored--specifically so that pieces are broken off, placed in a baking tin, and then baked (Page 1, lines 35-36) (Martin Declaration, ¶ 8). During baking, the pieces of Blaschke do then join together to form the dough product, which is then cut into pieces, using the lines created during baking by the joining of the pieces (Page 1, line 36 to Page 2, lines 1-3). The final product includes the lines of demarcation, which define the individual portions (Page 2, lines 15-16). The block can then be broken into smaller pieces along the score lines provided on the body to provide for individually baked items (Page 3, lines 24-27). One of ordinary skill in the art would have readily understood that the spaces between the pieces enabled the heat to flow around the pieces to provide for more uniform baking (*Id.*). The claimed methods, on the other hand, surprisingly and unexpectedly provide baked dough products with a chewier center as the result of baking an entire block that is not separated into smaller pieces (Martin Declaration, ¶ 8). Nothing in Blaschke suggests or motivated one of ordinary skill in the art to bake an entire block of dough (*Id.*). Accordingly, Applicants respectfully request that this rejection under 35 U.S.C. § 103(a) be reconsidered and withdrawn, as no *prima facie* case of obviousness has been shown on the record--particularly in view of the Martin Declaration.

Accordingly, the entire application is now in condition for allowance, early notice of which would be appreciated. Should the Examiner not agree with the Applicants' position, then a personal or telephonic interview is respectfully requested to discuss any remaining issues and expedite the eventual allowance of the application.

Respectfully submitted,

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Date

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